

02/03/2011

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q90107

Heinz FOCKE, et al.

Appln. No.: 10/550,890

Group Art Unit: 3782

Confirmation No.: 3733

Examiner: Christopher R. DEMEREE

Filed: September 27, 2005

For: FOLDING BOX FOR CIGARETTES

**REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41**

**MAIL STOP APPEAL BRIEF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated October 15, 2010. Entry of this Reply Brief is respectfully requested.

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**I. STATUS OF CLAIMS**

Claims 1-11, 16 and 17 have been canceled.

Claims 12-15 and 18-20 are pending in the application.

Claims 12-15 and 18-20 stand rejected and are the subject of this appeal.

**II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 12-15 and 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. Pub. No. 2002/0179464 to Focke *et al.* (hereinafter "Focke"), in view of U.S. Patent No. 6,832,677 to Bohdan *et al.* (hereinafter "Bohdan").

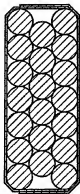
### **III. ARGUMENT**

#### **Claims 12-15 and 18-20 are patentable over the combination of Focke and Bohdan.**

In the "Response to Arguments" section of the "Examiner's Answer" the Examiner states, "Appellant contends ... that Focke does not disclose an octagonal cross section" (Ex. Ans., p. 6, ll. 7-8). Applicant respectfully submits that the Examiner mischaracterizes Applicants position in the Appeal Brief. Since the cigarette pack disclosed by Focke includes beveled corners, eight sides may be identified, thereby defining an octagonal configuration. However, Applicant submits that the octagonal configuration disclosed by Focke is suitable only for the standard 7-6-7 cigarette configuration and does not make obvious the claimed octagonal configuration requiring a modified cigarette configuration, as recited in the claims.

Further, in the "Examiner's Answer" the Examiner alleges, "[i]t would have been obvious to one of ordinary skill in the art ... to modify Focke's cigarette configuration in order to maximize the packing space within the package using Bohdan's channeling device" (Ex. Ans., p. 5, ll. 3). The Examiner maintains the position that the container of Focke has eight distinct sides and that it would be obvious to have the legs forming the angulations directed at angles of approximately 30 degrees to the front wall and 60 degrees to the side wall of the container (Ex. Ans., p. 4, ll. 1-16). Applicant respectfully submits that the Examiner's obviousness conclusion is in error for at least the following reasons.

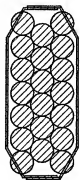
The configuration of the Focke cigarette pack is designed to accommodate cigarettes in a standard 7-6-7 configuration, as illustrated in FIG. c below.<sup>1</sup>



c.

As illustrated in FIG. c, the corners of the container are directed at angles of about 45 degrees in order to meet the design requirements of securely holding the four corner cigarettes of the standard 7-6-7 configuration which lie in the region of the 45 degree bevels. As further illustrated by FIG. a below, the corner dimensions of the claimed cigarette pack are not compatible with the standard 7-6-7 configuration.

a.



<sup>1</sup> FIGS. a, b, and c were submitted with the attached Exhibit to Applicant's September 4, 2009, response to the Office Action dated May 5, 2009.

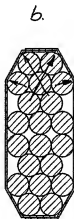
Absent the use of impermissible hindsight based upon Applicant's disclosure, one of ordinary skill in the art at the time the invention was made would have no reason to deviate from the standard 7-6-7 cigarette configuration, and therefore would have had no motivation to modify the cigarette pack of Focke since a modified cigarette pack would not properly contain the cigarettes in the standard 7-6-7 configuration. Even when combined with the disclosure of Bohdan, Applicant respectfully submits that the claimed cigarette pack would not be obvious to one of ordinary skill in the art at the time the invention was made.

Bohdan discloses a cigarette channeling device which introduces a cigarette group into a pack in various bundle configurations. FIG. 4 of Bodhan illustrates a nozzle for filling octagonal packs, and FIG. 5 illustrates another embodiment of Bohdan which produces a cigarette configuration similar to the claimed cigarette configuration. However, this disclosed embodiment of Bohdan provides only for the special case of an oval cigarette pack. The recommended cigarette formation for this, and only for this specific application of an oval pack, is the 2-3-2-3-3-2-3-2 formation shown in Fig. 6.

Thus, based on the disclosure of Focke's octagonal cigarette pack for accommodating a standard cigarette configuration and Bohdan's suggestion of a 2-3-2-3-3-2-3-2 cigarette formation for an oval-shaped pack, one of ordinary skill in the art at the time the invention was made would not have been motivated, absent the use of impermissible hindsight provided by Applicant's disclosure, to modify the octagonal pack of Focke to produce the claimed cigarette pack.

The design of the Applicant's claimed cigarette pack is based on the concept that the formation of the cigarettes and the cross-sectional shape of the pack are carefully matched with

one another. By virtue of their formation, the cigarettes form an inner support for the pack, as illustrated in FIG. b reproduced below.



As can also be seen in FIG. b, the claimed dimensions of the pack, namely the angle of the legs of  $30^\circ$ , on one hand, and of  $60^\circ$ , on the other, are just as significant as the width dimensions of the legs in holding the marginal cigarettes in a positive fit. No disclosure or suggestion for these features can be found in either Focke or Bohdan.

**IV. CONCLUSION**

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully submits the Examiner's conclusion that the claimed cigarette pack is obvious over the combination of Focke and Bohdan is in error, and requests that the Board reverse the Examiner's rejections of all claims on Appeal as failing to establish a prima facie case of obviousness of the claimed invention. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



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WASHINGTON OFFICE

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CUSTOMER NUMBER

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